

SPECIAL USE PERMIT

FILE NO.	SP20-010
LOCATION OF PROPERTY	200 Hayes Avenue (Southwest Corner of Hayes Avenue and Lean Avenue).
ZONING DISTRICT	R-2 Two-Family Residence District
GENERAL PLAN DESIGNATION	Mixed Use Neighborhood
PROPOSED USE	Special Use Permit to allow the demolition of an existing 1,268-square foot single family house located on a 0.41- gross acre site.
ENVIRONMENTAL STATUS	Exempt per CEQA Guidelines Section 15303 (a) New Constructions of Small Structures
APPLICANT ADDRESS	Henry Cord 401 Fieldcrest Drive San Jose, CA 95123
OWNER ADDRESS	Sharon Xu 1085 Windsor Street San José, CA 95129

FACTS AND FINDINGS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** The Special Use Permit is to allow the demolition of an existing 1,268-square foot single family house located on a 0.41- gross acre site located at the southwest corner of Hayes Avenue and Lean Avenue. No new construction is proposed.
2. **Site Description.** The 0.41-gross acre site is located at the southwest corner of Hayes Avenue and Lean Avenue at 200 Hayes Avenue. The site is currently developed with a single-family house. The site is surrounded by duplexes to the south and multi-family residential uses to the east across Lean Avenue, single-family residences to the north across Hayes Ave and Oak Grove High School to the west.
3. **General Plan Conformance.** The subject site has a designation of Mixed Use Neighborhood on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation is applied to areas intended for development primarily with either townhouse or small lot single-family residences and also to existing neighborhoods that were historically developed with a wide variety of housing types, including a mix of residential densities and forms. No new construction is proposed with this Permit application. Any future development of the site would be required to be consistent with the Mixed Use Neighborhood land use designation.

4. **Zoning Ordinance Conformance.** The project site is located within the R-2 Two-Family Residence District. No new construction is proposed with this Permit application. Any future development of the site would be required to comply with the development standards within R-2 Two-Family Residence District.
5. **Environmental Review.** A Tentative Map application, File No. T19-029, to subdivide this lot into three lots is currently on file. The demolition of the existing house is necessary to allow this subdivision. The intent of the demolition and subdivision is to allow the construction of one single family house on each new lot in the future. Therefore, to determine the level of CEQA analysis, the project scope should include not only the demolition but also the subdivision and the construction of three single-family houses in the future.

The existing house on site was built in 1957. A report entitled “Historical and Architectural Evaluation of the Residential Building Located at 200 Hayes Avenue” and DPR series A & B prepared by Bonnie Bamburg of Urban Programmers dated November 25, 2019 were submitted and reviewed by the City’s Historic Preservation Officer (HPO). The HPO determined that the demolition of the existing single-family house on site will not result in an environmental impact because there is no historic significance for the project site or the existing structure.

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303 (Class 3 Categorical Exemption - New Construction or Conversion of Small Structures) (a) applies to the construction of up to three single-family residences in urbanized areas. The project site is within an urbanized area. Therefore, this exemption applies to this project

6. **Special Use Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Special Use Permit.
 - a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and
Analysis: No new construction is proposed with this Permit application. Any future development of the site would be required to be consistent with the Mixed Use Neighborhood land use designation.
 - b. The Special Use Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and
Analysis: No new construction is proposed with this Permit application. The project complies with Zoning Codes Section 20.80.440.B which requires a Special Use Permit for demolition of an existing building without a replacement. Any future development of the site would be required to comply with the development standards within R-2 Two-Family Residence District.
 - c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.
Analysis: The project is consistent with City Council Policy 6-30 Public Outreach Policy for Land Use and Development Proposals. On-site signs describing the project were posted on the project site. A notice of the hearing was sent to surrounding neighbors and property owners within a 500 feet radius of the subject site.

- d. The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare; and

Analysis: Although no new development is currently proposed, a Tentative Map application has been filed to subdivide the lot into three lots. The intent of the subdivision is to build three new single-family houses. The site will be developed with three single family houses ultimately.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities; landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: No new development is proposed.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind of quantity or traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - ii. By other public and private service facilities as are required.

Analysis: No new development is proposed.

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: No new development is proposed.

7. **Demolition Permit Findings.** With respect to the demolition of the existing detached garage, the Director of Planning, Building, and Code Enforcement has considered the following:

- a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
- b. The failure to approve the permit would jeopardize public health, safety or welfare.
- c. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted.
- d. The approval of the demolition of the building would maintain the supply of existing housing stock in the City;
- e. Rehabilitation or reuse of the existing building would not be feasible; and
- f. The approval of the demolition of the building should facilitate a project that is compatible with the surrounding neighborhood.

Analysis: As discussed above, a report entitled "Historical and Architectural Evaluation of the Residential Building Located at 200 Hayes Avenue" and DPR series A & B prepared by Bonnie Bamburg of Urban Programmers dated November 25, 2019 were submitted and reviewed by the City's Historic Preservation Officer (HPO). The HPO determined that the demolition of the existing single-family house on site will not result in an environmental impact because there is no historic significance for the project site or the existing structure. The demolition of the existing house is to allow the 3-lot subdivision and to facilitate the construction of three single-family houses in the future. Therefore, the demolition of the house will not reduce the supply of the housing stock in the City. The new construction of three single-family houses will be compatible with the surrounding neighborhood.

In accordance with the facts and findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the Director, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the demolition has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Demolition Permit from the Building Official for the structures described under this Special Use Permit shall be deemed acceptance of all conditions specified in this Permit and the applicant's agreement to fully comply with all of said conditions.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge

standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "Special Use Permit SP20-010 Demolition Plan-200 Hayes Avenue" dated April 28, 2020 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Demolition.** Demolition shall include the clean-up of any hazardous materials to be removed in accordance with applicable laws and regulations.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
9. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
10. **Building and Property Maintenance.** The owner shall maintain the property in good visual condition.
11. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
13. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
14. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
15. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
16. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.

17. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
18. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **20th day of May, 2020.**

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy